2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

695 [692] Kazak common law[33] describe it after it had been considerably codified and systematized by Russian administrators.[34] A system of "people's courts," presided over by three judges elected subject to government approval was instigated, trial procedure formalized, and appellate courts established. According to my informants, whose ideas though somewhat vague agreed on the main point, the court of the bij had formerly been rather loosely organized. As mentioned above there was no fixed succession to the office of bij; a particular case might be referred to any outstanding individual who would render a decision according to his lights or interests.

Trial procedure consisted of hearing the evidence under oath of direct witnesses, if any, to the acts under consideration and of specially selected "character witnesses," relatives of the two parties. The "character witnesses" were not directly concerned in the case under consideration but were chosen from among the more distant relatives of the litigants and had to be acceptable to the opposing side.[35] The judge for his efforts in the [693] case was rewarded with presents from both parties if the affair could be settled to their mutual satisfaction,[36] but according to my informants he would frequently weigh his decision in favor of the individual from whom the largest present might be expected.

Concerning the cultural attitudes toward various offenses and specific methods of punishment or amounts of compensation there is great discrepancy and contradiction not only between the accounts of different writers but frequently within the pages of one report. The details of indemnification in particular cases are not of immediate concern but the question of the ultimate source of compulsion for enforcing them is of importance.

696 The bij's court had no direct executive or police powers. My informants were unable to say what would happen if a man refused to pay a judgment rendered against himself. Kargabaiev said, "It would never happen." I was not able to continue this line of inquiry but, although public opinion was clearly the final and only real source of coercion, yet it appears, as mentioned in connection with baranta, that the creditor might be permitted and perhaps expected to take matters into his own hands by attempting to collect the obligation by force. Grodekov[37] also gives indication that it might be possible for an individual incorrigibly lacking in social cooperation to be expelled from his uru.

689 626 Expulsion was also apparently the punishment for grave offenses against society as a whole, as for example serious breaches of the exogamic rule for which it was impossible to atone by compensation. Such cases, according to the informants, were very rare but used occasionally to happen when a man and girl who were close relatives fell in love with one another. It would be necessary for them to go to another aul, or to the mountains, or to the city."

[33] See: Izraitsov, *Obychnoe Pravo*; Ibragimov, *Zametki o Kirgizskom Sude*; Samokvasov, *Sbornik Obychnago Prava*, 200-43; Kozlow, *Das Gewohnheits Recht*; Petri, *Über die Rechtsbegriffe*; Grodekov, *Kirgizy i Karakirgizy*; Dingelstedt, *Le Droit coutumier*.

[34] The most complete account in English of the old Kazak customary law, largely translated from the Russian edition of Levshin, has been recently published by Riazanovskii (*Customary Law of the Kirghiz*).

[35] Dingelstedt, *Le Droit coutumier*, 323-26; Levshin, *Description des hordes*, 400.

[36] Dingelstedt, op. cit., 220.

[37] *Kirgizy i Karakirgizy*, 246-48.

692 session of biis.

In every volost from 4 to 8 biis were elected both for the judgment of criminal cases, subject to the people's court (1) and

673 1. Murder and baranta were considered criminal cases, subject to the people's court.

[698] The Kazakhs were judged by a military court for treason, inciting their fellow tribesmen to oppose the government, attacking the mail and military transports, the murder of Christians and other persons who had expressed the desire to become Christians, and for the murder of officials.

The Kazakhs were tried according to the common criminal laws of the empire for brigandage, stealing, attacking merchant caravans, flight into foreign domains, setting fire, manifest opposition to authorities, the manufacture and transmission of counterfeit money and the stealing of state property.

for every sort of litigation and suit.

693 The biis were elected by the people for three years.

Anyone could be chosen as a bii who enjoyed the respect and trust of the people, had not been blamed by a court, was not under investigation, and was not less than 25 years old.

The elected biis were confirmed by the military governor. They did not receive a salary, but they had the right to receive /177/ a special fee /biilyk/ for judging cases, which was established by folk customs. The fine for property suits could not be determined as higher than one-tenth of the value of the suit. For the judgment of murder cases of personal injuries, the biilyk was designated according to the customs.

692 The opposing sides in a litigation could, by mutual consent, turn to one or several biis for the examination of their case. The agreement of the litigating sides on the choice of a bii or biis for the judgment of their case had to be entered in the book established for the recording of judgments. In such a case, the judgment of the biis, as having the character of arbitration (1) was final in any amount.

1. In ancient times all courts were courts of arbitration among the Kazakhs, i. e., they were chosen each time by both sides. The plaintiff and the defendant appeared before the bii chosen by them, and if the bii was far away they

692 But their interference in the court was strictly forbidden.

The decrees of the extraordinary sessions were final. The examination of cases in the volost and extraordinary sessions was determined by custom.

Marital and family cases were settled by biis in court according to folk customs. In marital cases, the side which was dissatisfied with the decision of the people's court could appeal to the uyezd chief, who was deciding /reshal/ the case, and in more important cases, the decision could be presented to the military governor for review.

The Kazakhs could turn to a Russian court with a petition to judge their case, with the mutual consent of both sides, expressed in a written document.

The court of the biis was rendered clearly and publicly.

It was the obligation of the local Kazakh chiefs to produce the defendants in court and to present witnesses on the demand of the biis.

The decree of the biis was inscribed in brief in a special book. The biis were required to affix their seals to a judgment.

179. The decision of the biis was announced to both sides, and a copy of the decree authenticated by the affixing of a seal, was given to the side in whose favor the case was decided.

696 The carrying out of the decisions of the court was laid to the duty of the volost officials, who were subject to suit for delayed fulfillment of the decisions, on the basis of general laws for the inaction of the authorities, and also subject to the repayment of losses, if such losses were incurred by their delay. (1)

1. Articles 181-210 of the projected code for the administration of the Semirechie and Syr-Darya oblasts.

* * * *

693 Under the khans, the biis were designated from a number of rivals, petitioning for this office with gifts (one or more horses), and who were known for their intelligence, authority, erudition and experience. They did not consult the wishes of the people. Candidates whose ancestors had not been biis could receive this office only rarely and with difficulty.

The Kokandians did not touch this system.

At present many place intelligence and justice in the biis

before an exact knowledge of customary law, especially since now every bii has his own devices, which often contradict each other (chatak). 693

The biis used to be judged by other biis or clan heads, but now they are tried on the common basis.

Bad language, yelling and scuffling in court is prosecuted by the biis. No prosecution is made for infliction of wounds in court if the wounded person was guilty, but if the guilty person causes the wounds, he is liable to the payment of the same fine which is imposed for the same crime committed outside the court. [687] 683

The punishment is not made heavier for murder and fighting before the court.

If someone dishonors the bii in words, they rebuke him saying: "Your tongue touched upon the bii" (biige tiling tiidi), and he is forced to ask forgiveness, but no fine is imposed, the more so because the bii hesitates to enter a suit concerning this. 693 683

/180/ The wergeld is not changed for the murder of a bii, but a larger fine is imposed for wounding him than for wounding a private individual. There is no prosecution for blows inflicted on a bii, if he owed money, but for unjust blows a fine is imposed which is higher than the usual one. For the exaction of these higher fines it is necessary 1) that the act be proven, and 2) that the person guilty of injuring the bii should be from the district /okrug/ of that bii. The injury of a bii from a strange village is prosecuted in the same way as the injury of an ordinary person.

The word mekhkeme, i.e., tribunal or court chamber, was not used in former times. This is now the name for the place or tent designated by the bii for the admission and examination of complaints in the Perovsk and Auliye-Ata uyezds. The biis sit on felt (tekemet), in the place of honor in the tent or room - the "tur", which is opposite the entrance, and before them on the ground are the plaintiff, the defendant and other persons who have been called in. In general, however, the examination of cases takes place anywhere and at any convenient opportunity. The court is where they find the bii, be this in the road, on a visit, or at a bazaar. The most precious convenience to the nomads lies in this simplicity of the conditions of a court. An experienced bii has his book of decisions and his seal with him in all places at all times. 695

The bii first hears and enters into his book the complaint of the plaintiff (dagvager), and then gives the floor to the defendant (dzhuabger tanbys) or to the witnesses. All those called to the court

Often the first plaintiff is joined by a second, in order to get an easy profit because of the conviction in the first case. Therefore the case of each plaintiff and each defendant must be examined specially. 695

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Attorneys (vakil) already existed under the khans. They were also called "those who buy suits" (dauny satyb algan). 693

According to Zagriazhskii, (1) minors and insane persons cannot

1. Materialy dlia Statistiki Turkestanskago Kraia /Materials for Staistics of the Turkestan Region/, Pt. IV, pp. 194, 195.

be attorneys. The attorneys must convince the biis that the conducting of the case is specifically entrusted to them. They must /190/ be present during the testimony of the opposing side, and they procure the fine which is exacted for their principals. If the sender of the trusted person is sentenced to a fine or to corporal punishment the sentence is carried out on the sender. The sender of the trusted person can protest against the judgment of the bii, if his agent abused his trust. [676]

According to another source, the constituent can refuse the settlement of the agent in whom he has trusted, if the former has not given a written warrant.

Warrants are not the custom in the Kazalinsk uyezd, according to the communication of E. A. Aleksandrov, but persons are admitted who know how to speak in court. Such persons never appear in court without their clients.

During the swearing of an oath, only the plaintiff or only the constituent (ak iese) was present according to customary law, and this is still true today. The person entrusted by the constituent is never present during the oath of the opposing side.

Every man who has reached his majority who has seen or knows of a crime is admitted to give the testimony of a witness. A true (nagz) witness (aygak, gua) is considered to be he who has brought in the captured thief with the goods, or has taken the stolen goods away from him together with a horse and a coat, or has received syuyunchi from the owner before the people and the authorities (Perovsk uyezd). 695

Informers are divided into those who are open(bet aygak) and those who denounce behind the back (syrt aygak). The former are called to prove the truth of their words face to face with the thief.

Formerly the payment to the biis (biilyk) was not determined exactly. In addition to offerings and gifts, they received one of the best animals from the fine or at least a coat from the atton. Usually the entire fine received went into the khanlyk and manaplyk (among the Kirgiz), minus the stolen property.

In accordance with the law of 1867. the biilyk was required to be one-tenth the value of the livestock. The sum of the biilyk was recorded in the report, with the indication of the side which had to pay it, and whether the biilyk had been received or not.

Often, when it is impossible to get one-tenth, the biis limit themselves to a smaller part, trying to obtain the biilyk immediately after the announcement of the judgment, before the case is ended by an oath. For this reason it sometimes happens that the biis must return what had been received prematurely, for example, in an appeal. In order to receive the biilyk immediately, the biis either require half of it to be paid by each side, or an equal part from all the litigants, or exact it from the side which has cash, leaving it to the winner of the case to obtain the given biilyk from the loser. Sometimes this /197/ is recorded in the biis' books thus: "now both sides are paying equally, at the end the loser pays" (khasyr yeki taraf ting tuleydi, akybytda dzhygylgan tuleydi). But in general among the Kazakhs the imposition of the biilyk on one side or the other is not subject to any rules.

At the meeting of the biis of the Chimkent and Turkestan uyezds, in September 1877, it was established to take a biilyk on the basis of customary law in the following amounts: for the judgment of a case for the wergeld of a man, 300 rubles, for wergeld for an eye, 150 rubles, for crippling a man, 20 rubles; for the judgment of cases of theft, 8 tillias /24-32 rubles/ for one camel, 4 tillias for one horse; for cases of fights, 2 tillias.

Among the Kirgiz the biilyk is usually collected from the person who receives a sentence to pay. Sometimes it is collected from both sides, by the degree of their guilt (gunesine Karay). The biilyk is collected at the time when the judgment is established (mal kisēdi). Whoever cannot pay at once can be given a deferment, but if his offense is great they demand payment immediately.

The biilyk can be received in natura, for example, in suits concerning a harvest.

The biilyk is also collected when cases are ended by peaceful

693 arrangements.

When a suit or part of it is abandoned without consequence because of distance or some other reason, a biilyk is not collected.

A biilyk is not taken when a session is abandoned by force of an earlier decision. Also when an earlier decision is overruled, the biilyk received for it is returned.

When the bii decrees that the period of time of an oath is to be extended because of the illness of the swearer, he receives biilyk for this labor.

According to bii Sultan Kanaev, of the Chimkent uyezd, a biilyk is not taken even in such cases where the defendant clears himself by oath. He pays only about 20 or 40 kopeks then, up to one ruble, for receiving the document of acquittal from the bii with the affixing of the seal. This collection is called mukhrana ("for the seal").

681 /198/ Losses and court costs (chygyn) are included in the fine itself. When the fine has already been obtained, the biis can refuse a suit for the recovery of court costs, with the exception of cases concerning wergeld, for in such cases many people are summoned into court, and the cost of the summoning adds up to a considerable sum which cannot be covered by a part of the wergeld. (1)

1. According to Torgai, the expenses for a suit concerning wergeld can be separated from the wergeld. All pay equally for the wergeld /po khunu/, but for the expenses the guilty party pays first of all, and then the clan, and the latter pays only when the former already has no property left.

When a suit ends without a fine, the winner of the case seeks reimbursement for the losses and court expenses which he has also been required to pay in one session of the court or another.

67 The period of time for the payment of the fine is recorded in the document of the judgment, but this measure appears in part to be inoperative. The customary law does not assume a period of time.

696 In the case of the defendant's insolvency or his absence, the exaction is extended to his group of ten (unbasilas), and when their 697 means have been exhausted, to the group of fifty, then to the village, which is noted in the document. (2) Only that which was necessary for

2. In ancient times when the payer was insolvent, the group of ten, or fifty, etc., in order, did not pay for him,

692 in the volost.

692 Any person of the inhabitants of the volost can be elected to
693 the people's courts who enjoys the respect and trust of the people, and who has[1] been subject by sentence of the court, to punishments in excess of arrest for seven days or monetary fine of 30 rubles, who is not under judicial examination or under trial, and who is no less than 25 years of age.

The elections for the people's courts take place by a volost meeting of the electors, who are chosen by village meetings with one for every 50 heads of houses.

Two candidates are elected for every office of the court. The confirmation of one of them for the office of the judge and the other as a candidate for it depends on the governor, who designates new elections in case neither of these persons is confirmed. In the case of absence, illness or death of the judge, the candidate for the position carries out his duties, with the permission of the governor.

The people's judges receive payment on the basis of the customs existing on this matter.

The people's judges are equipped with special insignia to be worn when they are carrying out their official duties, as well as their official seals and books for the recording of judgments and deeds.

The close supervision of the keeping of the books is a duty of the uyezd chief, but meanwhile the responsibility for lack of observation of the established order falls upon the judges and chairmen of the sessions, according to who is concerned.

The people's judges are transferred /205/ to trial by the regional authorities for criminal breach of trust, on the basis of the decrees of the code of criminal law procedure which determine the order of arraignment of persons of the administrative department.

The people's court constitutes: a) courts presided over by one person, b) sessions of judges, and c) extraordinary sessions of judges.

692 All cases, both criminal and civil, begin before a single judge.
695 But the litigants have the choice, by mutual consent, to turn directly to a session for the examination of their cases, avoiding the single judges, and likewise to outside persons, whom the litigants entrust with the settlement of their disputes The judgments of the chosen mediators are final, no matter how large the value of the suit is.

The mutual agreement of the litigants on the choice of mediators must be entered into a special book established for this purpose in the volost, and signed by the litigants. The judgments

[1] [Should be "has not been" - A.]

[692] to encourage cases concerning the dismissal from official duties and bringing to trial those of their members who permitted clear abuses in their judgments. The uyezd chief presents the decrees on this subject to the oblast government.

The delivery to the sessions of the defendants and witnesses is the duty of the village authorities.

Complaints concerning unfinal decisions of single judges are transmitted in a period of two weeks from the day of the announcement of the decision to the volost administrator, for presentation to the session. After the opening of the session these complaints can be transmitted to the session itself.

[695] The people's court is carried on aloud and publicly.

/207/ Extraordinary sessions of the people's courts are designated, by order of the governor, for the judgment of cases in which residents of various uyezds or volosts are involved, as well as for the review of intercessions of the people's courts and their sessions on the banishment of the persons under sentence. The extraordinary sessions are composed of the judges of those volosts from which the litigants come or the persons under sentence, with no less than one judge from a volost.

The designation of the judges for an extraordinary session, except for those elected by the litigants, is done by the uyezd chief. Judges who have participated in previous sessions within a year take part only at their own wish.

Extraordinary sessions of the courts take place in the presence of the chief of the uyezd in which the session meets, or an official specially commandeered for this purpose. The duty of these official persons is exclusively to see to the decorum in the place of meeting of the session.

The extraordinary sessions of the people's courts act on the basis of the rules established for ordinary sessions.

[693] People's judges, who are absent from a session, ordinary or extraordinary, without legally acceptable reasons, are subject to a monetary fine of 10 rubles, by order of the uyezd chief, which can be appealed to the governor within a period of a month. These fines go for the building of places of confinement.

[696] The carrying into execution of the decisions of the people's court is laid upon the volost administrators and village elders, under the supervision of the uyezd chief. Copies of the decisions carried out, with a note of their fulfillment, are preserved with the volost administrators. Persons carrying out the decisions, as well as the uyezd chiefs supervising them, are subject to legal responsibility and the reparation for damages for slowness and improper action in this connection.

[279]

The most important was the establishment of tribunals, which were called rasprava. Two of these were opened in the Alimul and Baiulin descent lines, because of their large numbers. The Semirod line only had one. Each rasprava was composed of a president and two members, who were required to meet every day and to examine, with all three present, the petitions addressed to them and to give their decisions, to give satisfaction to the injured and the oppressed, and to give the dissatisfied the right to appeal to the border tribunal sitting in Orenburg. But since the members of these tribunals did not know how to read, all the writing was confided to a mullah, or secretary, who was assigned to each tribunal with an aide. His duty was to stamp the papers which were entered, copy them in a notebook, make the notes and protocols, make the examinations, keep the registers, establish and inscribe the hours of hearings, and write the reports, communications, and orders. All this was to be done according to the forms given by the government of Orenburg.

In addition a principal elder was chosen in each of the three descent lines of the Little Horde and several secondary elders to supervise the conduct of the people.

Batyr Syrym, who belonged to the Baiulin descent line, was chosen as one of the three principal elders.

All those who were elected to fill the positions we have named for the first three years were called upon to swear an oath to serve faithfully. Later they were confirmed (1) by the Empress, and they were given large stipends, partly in wheat and partly in money.

1. The preliminary decision of the Empress to open the tribunals was presented to Baron Igelstrom by a rescript of June 3, 1786, and the confirmation of the elders nominated for the places on December 7, 1787.